

# **RULEMAKING NOTICE AND INITIAL STATEMENT OF REASONS**

**Date: December 17, 1997**

**TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS**

**SUBJECT: Adoption of Regulations on Layoffs**

**NOTICE IS HEREBY GIVEN**

**The State Personnel Board (Board) will, subject to consideration of the input received on this proposed regulatory action, repeal Article 21, Sections 470, 470.1, 471, and 472 in their entirety and create Article 25, Section 547.2 of the Code of Regulations, at its regularly scheduled meeting on January 6, 1998, 1:30PM at the State Personnel Board, Room 150, 801 Capitol Mall, Sacramento, CA 95814**

## **PUBLIC HEARING**

**A public hearing will be held to receive oral and written input on the proposed regulatory action at the January 6, 1998 meeting of the Board.**

## **DEADLINE FOR WRITTEN COMMENTS**

**Interested parties are invited to submit written comments no later than January 5, 1998, to Jose Perez, State Personnel Board, Personnel Resources and Innovations Division, MS 55, PO Box 944201, Sacramento, CA 94244-2010.**

## **AUTHORITY AND REFERENCE**

**The Board proposes to adopt these regulations under the authority granted by Government Code 18675, 19582, 19702.(g), and 19798, and Sections 51.2 and 52 of Article 4 of the California Code of Regulations.**

## **INFORMATIVE DIGEST**

**Government Code Section 18701 authorizes the Board to prescribe, amend and repeal regulations for the administration and enforcement of the Civil Service Act.**

**Government Code Sections 19790 Et. Seq. enumerate the requirements of the State Civil Service Affirmative Action Program, including the requirements that State agencies establish goals and timetables to eliminate identified under utilization in employment.**

**Government Code Section 19798 provides that "In establishing order and subdivision of layoff and reemployment, the board when it finds discriminatory hiring practices, shall by rule, adopt a process that provides that the composition of the affected work force will be the same after the completion of the layoff, as it was before the layoff procedure was implemented. This section does not apply to state employees in Bargaining Unit 5." California Code of Regulations 470-472 were adopted as a means of implementing this**

section.

The effect of Sections 470, 470.1, 471, and 472 on departments experiencing reduction in force has been to delay implementation of layoffs often impacting the number of individuals affected.

The proposed action would relieve departments from this undue delay while at the same time afford employees the right of due process as they relate to Government Code Section 19798. Employees who submit a complaint to the Board and establish a prima facie case of discrimination related to the layoff may be afforded an investigatory hearing. If there is a finding of discrimination the Board may order an adjustment of the seniority based layoff process as a remedial act. Only the Board may decide such a remedy.

The proposed regulation Section 547.2 would substitute Sections 470, 470.1, 471, and 472 which would be repealed. This change will allow the Board to streamline the process to expedite necessary layoffs and to more appropriately deal with allegations of discrimination through the discrimination complaints appeal process.

#### **FISCAL IMPACT**

This proposed regulatory action imposes: (1) no cost or savings on any state agency; (2) no cost on any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; (3) no other non-discretionary cost or savings on local agencies; and, (4) no costs or savings in federal funding to the State.

#### **COSTS TO LOCAL AGENCIES AND SCHOOL DISTRICTS AND EFFECT ON HOUSING COSTS**

This proposed regulatory action does not impose a mandate on local agencies school districts and has no effect on housing costs.

#### **EFFECT ON BUSINESS**

This proposed regulatory action does not have any impact on small business or other businesses, including the ability of California businesses to compete with businesses in other states.

#### **BUSINESS ASSESSMENT**

This proposed regulatory action does neither create nor eliminate jobs or businesses in the State of California, nor result in the elimination of existing businesses, nor create or expand businesses in the State of California.

#### **POTENTIAL COST IMPACT ON DIRECTLY AFFECTED PRIVATE PERSONS OR BUSINESSES**

This proposed regulatory action will have no cost impact on directly affected private persons. There are no directly affected businesses.

## **ALTERNATIVE CONSIDERED**

The Board must determine that no alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Board has prepared a Statement of Reasons for and the Text of the proposed regulations. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file will be available for public inspection at Room 555 of the State Personnel Board, 801 Capitol Mall, Sacramento, CA.

## **AVAILABILITY OF MODIFIED TEXT**

Following the written comment period and the public hearing, the Board may take the proposed regulatory action substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the Board adopts the resulting regulatory action. Requests for copies of any modified regulations should be addressed to the contact person identified in this notice. Written comments on the modified regulations will be accepted for 15 days after the date on which they are first made available to the public.

## **CONTACT PERSON**

Questions regarding this regulatory action should be directed to Jose Perez, (916) 654-5283.

**LAURA M. AGUILERA**, Chief  
Personnel Resources and Innovations Division

Attachment: Modified Text of Proposed Regulations

## **REPEAL THE FOLLOWING SECTIONS**

### **Article 21. Layoff and Demotion**

#### **470. General**

In accordance with the provisions of this Article, past hiring practices within the appointing authority where layoffs are taking place shall be reviewed to determine if past discrimination has occurred. Where the board finds such discrimination, it shall establish specific orders and subdivisions of layoff and reemployment that result in the relative composition of the affected work force being as nearly as possible the same after the completion of the layoff as it was before the layoff procedures were implemented.

Note: Authority cited: Section 18701, Government Code. Reference: Section 19798, Government Code.

#### **470.1 Definitions.**

## For purpose of this Article

(a) "Affected Work Force" means all employees in the class(es) of layoff.  
(b) "Affected Work Force Group" means a group of employees in the class(es) of layoff that meets one of the following definitions.

(1) "American Indian" means any person who is a member of an American Indian tribe or band recognized by the Federal Bureau of Indian Affairs; or has at least one-quarter American Indian blood quantum of tribes or bands indigenous to the United State and/or Canada;

(2) "Asian" means persons whose origin is the Far East, Southeast Asia or the Indian subcontinent and includes, for example, China, Japan and Korea;

(3) "Black" means persons whose origin is any of the Black racial groups of Africa;

(4) "Individual with a disability" means, with respect to an individual (1) having a physical or mental impairment that substantially limits one or more major life activities of such individual; (2) having a record of such impairment; or (3) being regarded as having such an impairment;

(5) "Female" means all persons of the female gender;

(6) "Filipino" means persons whose origin is the Philippine Islands;

(7) "Hispanic" means

## TEXT OF PROPOSED REGULATION

### FOR HANDLING DISCRIMINATION COMPLAINTS

### IN LAYOFF OR DEMOTION

## Article 24. Discrimination

### 547.2 Layoff and Demotion

(a) Within 30 days after service of notice of layoff, an aggrieved employee, who contents that there have been past discriminatory hiring practices, may file a written appeal with the Board in accordance with Rule 51.2.

(b) The board may investigate such claims, with or without a hearing in accordance with Rule 52, and may order such appropriate relief as warranted.

(c) Where the board finds discrimination in past hiring practices, it shall establish specific orders and subdivision of layoff in accordance with Government Code section 19798.

Note: Authority: Section 18701, Government Code

Reference: Section 18671, 18675, 19582, 19702(g), and 19798, Government Code; Sections 51.2, 52 of Article 4 of the California Code of Regulations.